

**VARIANCE REQUEST
BOARD OF ADJUSTMENT
February 23, 2021**

CASE: ZBA-955

PETITIONER: McAdams, applicant, on behalf of City of Wilmington, property owner.

REQUEST: Variance from tree retention requirements per Section 5.3.4(C) and interior landscaping requirements per Section 5.4.5(C) of the New Hanover County Unified Development Ordinance (UDO).

LOCATION: 205 Sutton Steam Plant Road
PID: R04000-001-012-000

ZONING: I-2, Heavy Industrial District

ACREAGE: 65.47 Acres

BACKGROUND AND ORDINANCE CONSIDERATIONS:

McAdams, applicant, on behalf of City of Wilmington, property owner, is requesting variances from two UDO provisions related to tree retention and interior landscaping requirements.

The subject property consists of 65.47 acres located to the south of Sutton Steam Plant Road, north of Sampson Street, and is zoned I-2, Heavy Industrial. Currently, there are seven existing sports fields on the northern half of the property. The applicant intends to construct four additional sports fields for the southern portion of the property, totaling eleven sports fields. When applying the UDO language from these sections, the proposed development would require additional off-street parking, interior landscaping in the amount of eight percent of the parking area, and tree retention where 15 trees would have to be retained or planted for each acre of area on the parcel disturbed by the development.

The subject tract was once a landfill and is now part of an EPA Brownfield Revitalization Program. This means that an environmental cleanup for the earlier use is active on the site. EPA Brownfield Revitalization Programs are common for abandoned industrial facilities, waste disposal sites, and former gas stations. These programs can aid in returning properties to productive future uses.

Sites involved in Brownfield Revitalization Programs may have limitations accompanied with the redevelopment. These limitations on the subject parcel are because of a geocell cover system or soil cover system placed over the contaminated area. In the case of the subject site, vegetative restrictions within the landfill/brownfield boundary are placed on root depth and root runners.

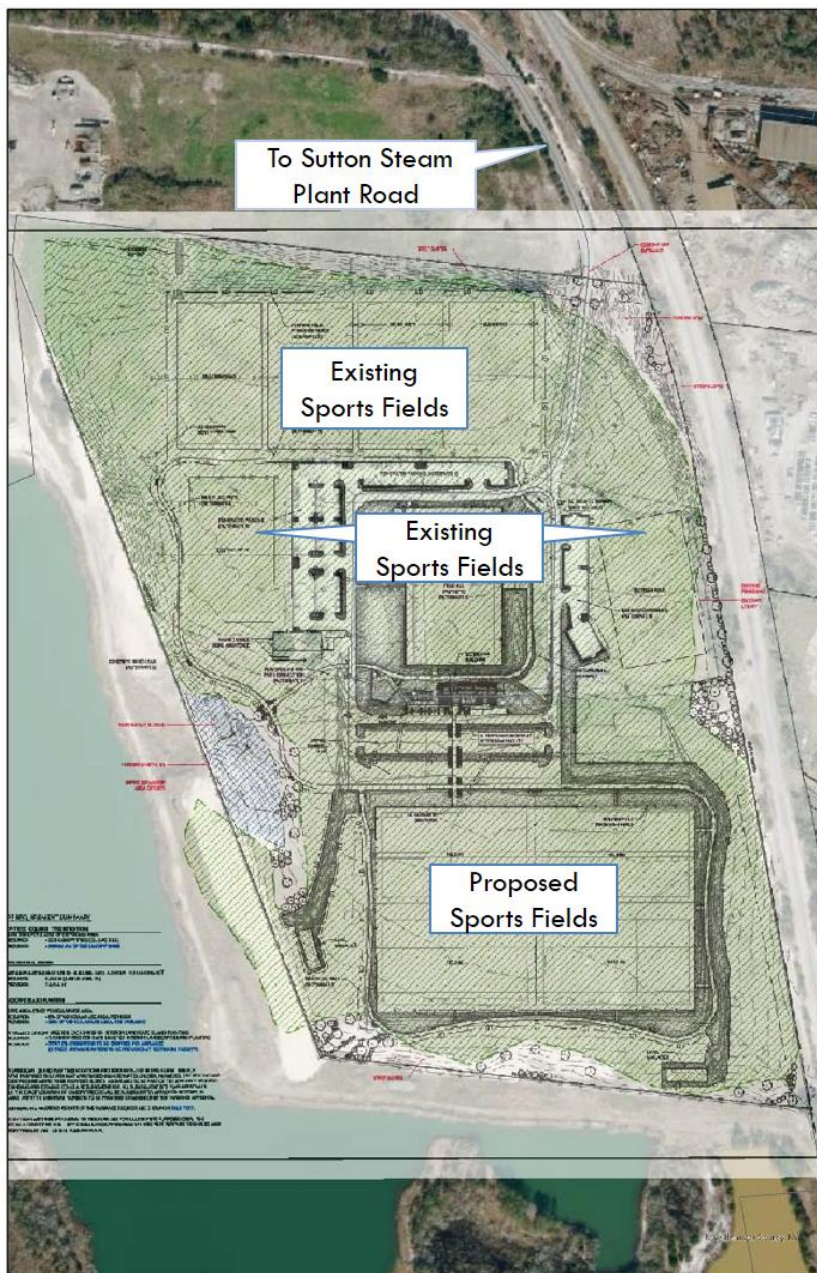


Figure 1: Aerial with Applicant's Conceptual Plan with Staff Markups

Under the provisions of the UDO, approximately 323 trees would be required to be planted within the proposed disturbed area (approximately 21.5 acres) as part of the tree retention requirements, and one tree per 144 square feet (approximately 49 trees) would be required to be planted to meet the interior parking standards. However, a large percentage of the site is occupied by landfill/brownfields, subject to restrictions on root depth, and available space outside the landfill/brownfields boundary is limited. According to the applicant, difficulties arise with providing the required number of plantings because of the vegetative cover restrictions on root depth within the landfill/brownfields.

5.3.4 TREE RETENTION STANDARDS TRANSITIONAL BUFFERS

C. A minimum of 15 trees at least two inches DBH or two caliper inches, as applicable, shall be retained or planted on a parcel where development occurs in accordance with Section 5.4, Landscaping and Buffering.

5.4.5. PARKING LOTS

C. Landscaping for parking lot interiors shall be in accordance with the requirements in Table 5.4.5.C: Standards for Parking Lot Interiors.

Table 5.4.5.C: Standards for Parking Lot Interiors	
Dimensional Standards	<ul style="list-style-type: none">Landscaped areas in the interior of parking lots shall be equal to eight percent of the total area to be used for parking, loading, automobile sales, driveways, internal drive aisles, and other vehicular or pedestrian use.Landscaping islands, either separate from or protruding from perimeter landscaping strips, shall be a minimum of 12 feet in width measured from back of curb to back of curb.
Plantings Required	<ul style="list-style-type: none">One planted or existing tree shall be required for every 144 square feet rounded to the next lowest whole number of total interior landscaped area, with a minimum of one tree in each island.At least 75 percent of trees required for interior landscaping shall be of a shade/canopy species.The remainder of interior landscaped area shall be covered with appropriate mulching or vegetative groundcover, except for designated pedestrian walkways.

Figure 2: Variance Requested from Tree Retention Requirements per Section 5.3.4(C) and Interior Landscaping Requirements per Section 5.4.5(C) of UDO

As such, the applicant is requesting the following variances:

- (A) A variance of 173 trees required from Section 5.3.4(C) of the UDO requiring that a minimum of 15 trees at least two inches DBH or two caliper inches, as applicable, shall be retained or planted on a parcel where development occurs.

The applicant is proposing to disturb approximately 21.5 acres, requiring about 323 trees to be retained or planted. The applicant is proposing to plant about 150 trees outside of the Landfill/Brownfield boundary.

- (B) A variance of 49 trees required from Section 5.4.5(C) of the UDO requiring one planted or existing tree shall be required for every 144 square feet of total interior landscaped area, with a minimum of one tree in each parking island.

The applicant is proposing for the interior parking landscaped areas to be increased from eight percent to about sixteen percent, providing more areas for shrubs because of the inability to plant trees.

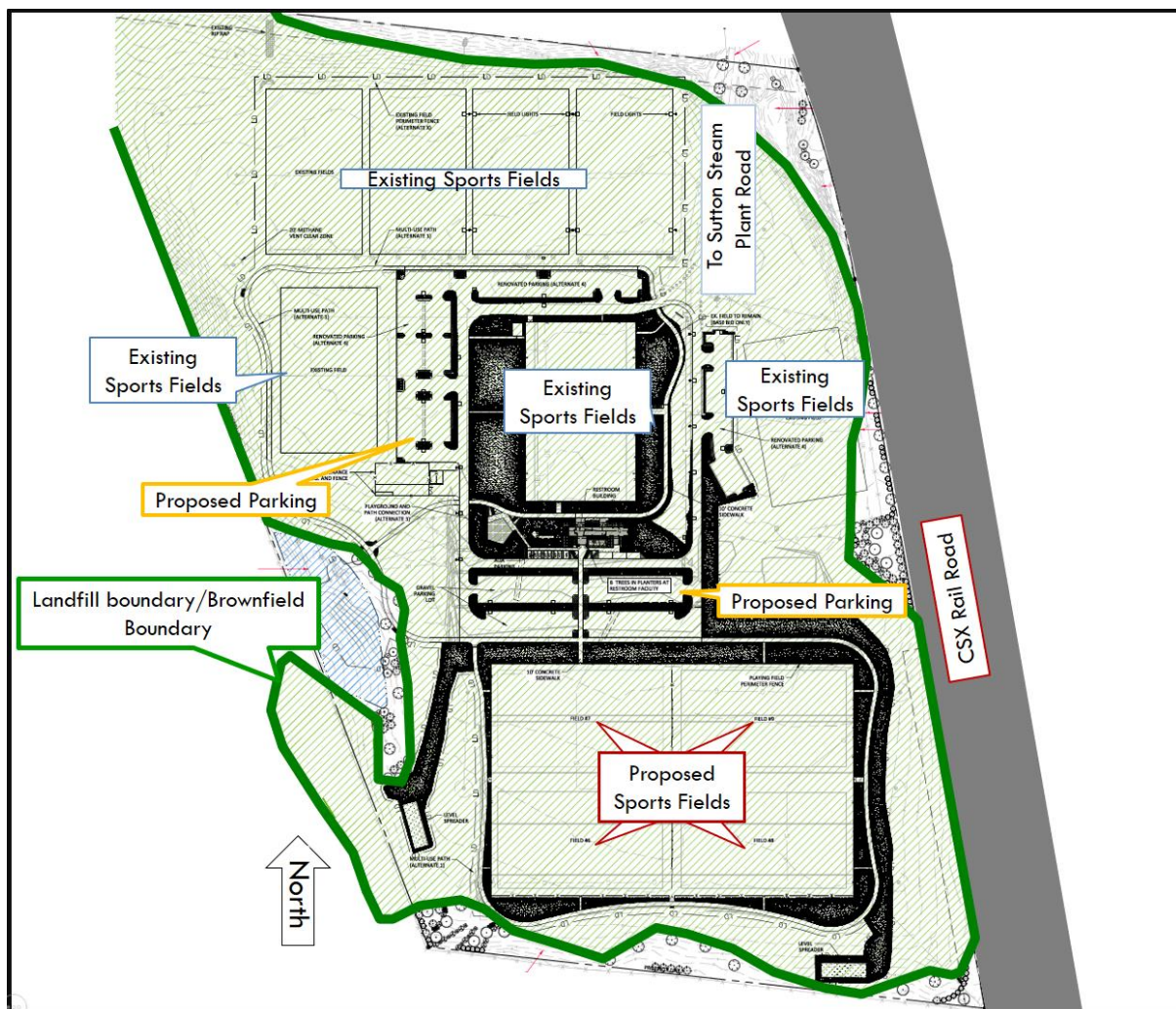


Figure 3: Applicant's Conceptual Plan with Staff Markups Illustrating the Landfill /Brownfield Boundary

The applicant contends that the variance is necessary in order to be compliant with site vegetative cover standards for landfills/brownfields, as specified by North Carolina's Department of Environmental Quality. When applying the UDO language from Sections 5.3.4(C) and 5.4.5(C), the landfill/brownfield boundary illustrated above in green is restricted by the Landfill Site Vegetative Cover documentation provided in your packet that states that root depth shall be no greater than 18 inches at maturity with no root runner greater than 6 inches.

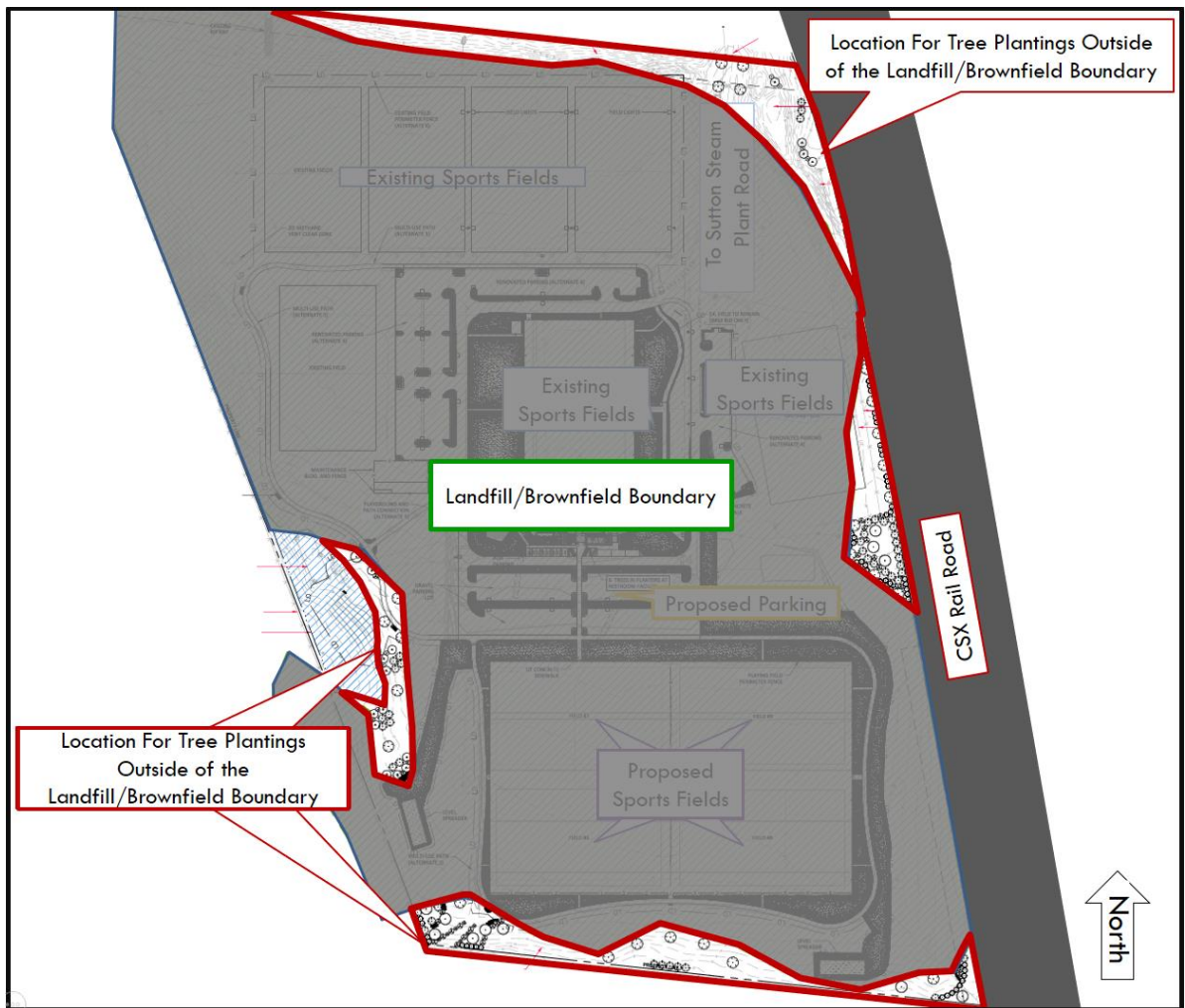


Figure 4: Applicant's Conceptual Plan with Staff Markups Illustrating Areas Not Restricted For Vegetative Cover of Root Depth

The applicant has submitted a landscaping plan that proposes about 150 understory trees to be placed outside the landfill/brownfields boundary located in red above.

BOARD OF ADJUSTMENT POWER AND DUTY:

The Board of Adjustment has the authority to authorize variances from the terms of the Unified Development Ordinance where, due to special conditions, a literal enforcement of the regulations would result in unnecessary hardship. In granting any variance, the Board may prescribe appropriate conditions and safeguards in conformity with the Unified Development Ordinance. A concurring vote of four-fifths (4/5) of the voting members of the Board shall be necessary to grant a variance. A variance shall not be granted by the Board unless and until the following findings are made:

1. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

ACTION NEEDED (Choose one):

1. **Motion to approve the variance request based on the findings of fact (with or without conditions)**
2. **Motion to table the item in order to receive additional information or documentation (Specify).**
3. **Motion to deny the variance request based on specific negative findings in any of the 4 categories above.**